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Of Attorneys for Defendant/Counterclaim Plaintiff Coast
Cutlery Co.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORLAND DIVISION

**ZWEIBRÜDER OPTOELECTRONICS
GMBH & CO. KG**, a German limited
liability company,

Plaintiff,

vs.

COAST CUTLERY CO., an Oregon
corporation,

Defendant.

No. CV 11-557 HU

**COAST CUTLERY CO.'S ANSWER TO
FIRST AMENDED COMPLAINT AND
COUNTERCLAIM**

DEMAND FOR JURY TRIAL

For its answer to Zweibruder Optoelectronics GmbH & Co. KG's First Amended Complaint (the "Complaint"), defendant Coast Cutlery Co. ("Coast") hereby admits, denies and alleges as follows:

1. Admitted.
2. Admitted.

3. Admitted.

4. Admitted.

5. Coast lacks sufficient information to admit or deny the truth or falsity of the allegations set forth in Paragraph 5 of the Complaint and therefore denies the same.

6. Admitted.

7. Coast lacks sufficient information to admit or deny the truth or falsity of the allegations set forth in Paragraph 7 of the Complaint and therefore denies the same.

8. In response to Paragraph 8 of the Complaint, Coast admits only that Zweibruder developed the design and technology for a reflector lens focusing system and that light products with that system were sold by Coast in the United States under the trademark ADVANCED FOCUS SYSTEM. Coast further admits that this technology enables a light beam to be adjusted between a focused and defocused position, allowing for optimal use in both short and long range distances. Coast lacks sufficient information to admit or deny the truth or falsity of the remaining allegations in Paragraph 8 and therefore denies the same.

9. In response to Paragraph 9 of the Complaint, Coast admits only that Zweibruder applied the mark ADVANCED FOCUS SYSTEM to products and product packaging at the instruction of Coast in connection with Coast's marketing, distribution and sale of LED LENSER products in the United States, and that use of the ADVANCED FOCUS SYSTEM trademark in the United States was by Coast, who invented, first used, and registered the mark, and who advertised, promoted, marketed, distributed and warranted the products sold under the mark in the United States. Coast lacks sufficient information to admit or deny the truth or falsity of the remaining allegations in Paragraph 9 and therefore denies the same.

10. The allegations in Paragraph 10 of the Complaint refer to European Community Trademark No. 005670443, which trademark registration and the contents thereof speaks for itself and requires no response. To the extent a response is required, Coast lacks sufficient information to admit or deny the truth or falsity of the allegations set forth in Paragraph 10 and

therefore denies the same.

11. In response to Paragraph 11 of the Complaint, Coast admits only that Zweibruder applied the mark TEST IT to product packaging at the instruction of Coast in connection with the Coast's marketing, distribution and sale of LED LENSER products in the United States, and that use of the TEST IT trademark in the United States was not by Zweibruder but was by Coast, who invented, first used, and registered the mark, and who advertised, promoted, marketed, distributed and warranted the products sold under the mark in the United States. Coast admits that the TEST IT mark appears on the outside of the product package, and signals to consumers that they may try the product prior to purchase by pushing a button that is accessible from outside the package. Coast lacks sufficient information to admit or deny the truth or falsity of the remaining allegations in Paragraph 11 and therefore denies the same.

12. The allegations in Paragraph 12 of the Complaint refer to German Trademark and Trademark Office ("DPMA") Registration No. 30512291, which trademark registration and the contents thereof speaks for itself and requires no response. To the extent a response is required, Coast lacks sufficient information to admit or deny the truth or falsity of the allegations set forth in Paragraph 12 and therefore denies the same.

13. Denied.

14. Denied.

15. In response to Paragraph 15 of the Complaint, Coast admits that the parties entered into an Exclusive Distributor Contract (the "Distributor Contract"), the contents of which speaks for itself and requires no response. The remaining allegations in Paragraph 15 are denied.

16. In response to Paragraph 16 of the Complaint, Coast denies that it was required to seek Zweibruder's consent or otherwise notify Zweibruder of its intent to apply to register the ADVANCE FOCUS SYSTEM¹ mark with the USPTO. The remaining allegations in Paragraph 16 are admitted.

¹ Coast's registration is for the mark ADVANCE FOCUS SYSTEM, which is for all intents and purposes, the equivalent of ADVANCED FOCUS SYSTEM.

17. Admitted.

18. In response to Paragraph 18 of the Complaint, Coast admits only that at some point Zweibruder alleged that it was the true owner of the ADVANCED FOCUS SYSTEMS mark and demanded that Coast assign its registration to Zweibruder. Coast denies that Zweibruder is the true owner of the mark. Coast lacks sufficient information to admit or deny the truth or falsity of the remaining allegations in Paragraph 18 and therefore denies the same.

19. In response to Paragraph 19 of the Complaint, Coast admits that it neither assigned the ADVANCE FOCUS SYSTEMS registration to Zweibruder nor surrendered it to the USPTO. Coast further admits that it informed Zweibruder that Zweibruder has no ownership rights in the mark. The remaining allegations in Paragraph 19 are denied.

20. In response to Paragraph 20 of the Complaint, Coast denies that it was required to seek Zweibruder's consent or otherwise notify Zweibruder of its intent to apply to register the TEST IT mark. The remaining allegations in Paragraph 20 are admitted.

21. Denied.

22. In response to Paragraph 22 of the Complaint, Coast admits only that it filed the relevant trademark application for the mark TEST IT with the USPTO. The remaining allegations in Paragraph 22 are denied.

23. Admitted.

24. Admitted.

25. Admitted.

26. In response to Paragraph 26 of the Complaint, Coast admits only that on or about December 14, 2010, it published and distributed certain promotional materials referencing its improved hand held lights and head lamp products, including the statements set forth in subparts a. through e. of Paragraph 26. These promotional materials, including the contents thereof, speak for themselves and require no response. The remaining allegations in Paragraph 26 are denied.

27. Denied.

28. Denied.

29. In response to Paragraph 29 of the Complaint, Coast admits only that on or about December 14, 2010, it published and distributed certain promotional materials referencing its improved hand held lights and head lamp products, including the statements set forth in subparts a. through d. of Paragraph 29. These promotional materials, including the contents thereof, speak for themselves and require no response. The remaining allegations in Paragraph 29 are denied.

30. Denied.

31. Denied.

32. In response to Paragraph 32 of the Complaint, Coast admits only that it has used and is using the TEST IT mark in connection with products not manufactured or sold by Zweibruder. The remaining allegations in Paragraph 32 are denied.

33. In response to Paragraph 33 of the Complaint, Coast admits only that the Distributor Contract by its terms expired on May 31, 2011. Coast further admits that it continues to sell certain Zweibruder products that were packaged with certain marketing materials, but that such marketing materials were placed in the product packaging by or on behalf of Zweibruder, despite Zweibruder being well aware that it was not renewing its Distributor Contract with Coast. The contents of such marketing materials speak for themselves and require no response. The remaining allegations in Paragraph 33 are denied.

34. In response to Paragraph 34 of the Complaint, Coast admits that it continues to sell certain Zweibruder products that were packaged with certain marketing materials, but that such marketing materials were placed in the product packaging by or on behalf of Zweibruder, despite Zweibruder being well aware that it was not renewing its Distributor Contract with Coast. The contents of such marketing materials speak for themselves and require no response. The remaining allegations in Paragraph 34 are denied.

35. In response to Paragraph 35 of the Complaint, Coast admits that it is selling certain Zweibruder products that were packaged with certain marketing materials, the contents of which speaks for themselves and require no response. Coast lacks sufficient information to admit or deny the truth or falsity of the remaining allegations in Paragraph 35 of the Complaint and therefore denies the same.

36. Denied.

37. Coast repeats and realleges its responses to each and every allegation set forth in Paragraphs 1 through 25 of the Complaint.

38. In response to Paragraph 38 of the Complaint, Coast admits only that Zweibruder has alleged that it is the owner of the TEST IT and ADVANCED FOCUS SYSTEM marks, and has further alleged that Coast is not authorized to use the marks following the expiration of the Distributor Contract. The remaining allegations in Paragraph 38 are denied.

39. Admitted.

40. In response to Paragraph 40 of the Complaint, Coast admits only that a dispute has arisen between the parties as to their respective ownership rights in the TEST IT and ADVANCED FOCUS SYSTEM marks. The remaining allegations in Paragraph 40 are denied.

41. In response to Paragraph 41 of the Complaint, Coast admits only that Zweibruder seeks declaratory relief. The remaining allegations in Paragraph 41 are denied.

42. Coast repeats and realleges its responses to each and every allegation set forth in Paragraphs 1 through 6 and 26 through 31 of the Complaint.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Coast repeats and realleges its responses to each and every allegation set forth in Paragraphs 1 through 6, 26 through 31, and 42 through 46 of the Complaint.

48. Denied.
49. Denied.
50. Denied.
51. Denied.
52. Coast repeats and realleges its responses to each and every allegation set forth in Paragraphs 1 through 6 and 32 through 36 the Complaint.
53. Denied.
54. Denied.
55. Denied.
56. Denied.
57. To the extent any allegations set forth in the Complaint are not expressly admitted or denied by Coast herein, such allegations are denied.

PRAYER

These paragraphs set forth the prayer for judgment requested by Zweibruder against Coast to which no response is required. Coast denies that Zweibruder is entitled to any of the relief requested.

AFFIRMATIVE DEFENSES

Coast alleges and asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

58. Zweibruder's Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Standing)

59. Zweibruder's claims are barred, either in whole or in part, because Zweibruder lacks standing.

THIRD AFFIRMATIVE DEFENSE

(Competition Privilege)

60. Zweibruder's claims are barred, either in whole or in part, by the competition privilege.

FOURTH AFFIRMATIVE DEFENSE

(Laches and/or Equitable Estoppel)

61. Zweibruder's claims are barred, either in whole or in part, by laches and/or equitable estoppel.

FIFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

62. Zweibruder's claims are barred, either in whole or in part, by unclean hands.

SIXTH AFFIRMATIVE DEFENSE

(Ownership - TEST IT)

63. Zweibruder is not entitled to the relief requested because Coast and not Zweibruder is the legal owner of all right, title and interest in and to the TEST IT mark. Coast is the owner of the TEST IT mark because, for among other reasons:

- a. Coast invented the TEST IT mark and first used the mark in connection with the lighting products sold under the mark;
- b. Coast designed the packaging and provided such designs to Zweibruder for Zweibruder to package the lighting products bearing the TEST IT mark;
- c. Products sold under the TEST IT mark have been primarily branded as COAST products;
- d. Coast was at all material times responsible for maintaining the quality and uniformity of the products and/or product packaging sold under or in connection with the TEST IT mark;

- e. Consumers associate the TEST IT mark with Coast;
- f. Coast was at all material times the party warranting the quality of the products sold under the TEST IT mark and was at all material times the party to whom purchasers made complaints;
- g. Coast was at all material times solely responsible for all advertising, promotional and marketing efforts in connection with the products sold under the TEST IT mark, including without limitation, designing and paying for all product packaging, advertising, and other sales and promotional materials;
- h. Coast possesses the goodwill associated with the TEST IT mark; and
- i. Coast has priority rights in the TEST IT mark as the owner of a pending U.S. trademark application for the mark, U.S. Serial No. 85/282,351.

SEVENTH AFFIRMATIVE DEFENSE

(Ownership – ADVANCED FOCUS SYSTEM Mark)

64. Zweibruder is not entitled to the relief requested because Coast is in fact the legal owner of all right, title and interest in and to the ADVANCED FOCUS SYSTEM mark. Coast is the owner of the ADVANCED FOCUS SYSTEM mark because, for among other reasons:

- a. Coast invented the ADVANCED FOCUS SYSTEM mark and first used the mark in the United States in connection with the lighting products sold under the mark;
- b. Coast designed the packaging and provided such designs to Zweibruder for Zweibruder to package the lighting products bearing the ADVANCED FOCUS SYSTEM mark;
- c. Products sold under the ADVANCED FOCUS SYSTEM mark have been primarily branded as COAST products;

- d. Coast was at all material times responsible for maintaining the quality and uniformity of the products and/or product packaging sold under or in connection with the ADVANCED FOCUS SYSTEM mark;
- e. Consumers associate the ADVANCED FOCUS SYSTEM mark with Coast;
- f. Coast was at all material times the party warranting the quality of the products sold under the ADVANCED FOCUS SYSTEM mark and was at all material times the party to whom purchasers made complaints;
- g. Coast was at all material times solely responsible for all advertising, promotional and marketing efforts in connection with the products sold under the ADVANCED FOCUS SYSTEM mark, including without limitation, designing and paying for all product packaging, advertising, and other sales and promotional materials;
- h. Coast possesses the goodwill associated with the ADVANCED FOCUS SYSTEM mark; and
- i. Coast is the owner of a U.S. federal trademark registration for the mark ADVANCE FOCUS SYSTEM, U.S. Registration No. 3,709,971.

OTHER DEFENSES

Coast will rely on any and all other valid defense which may be developed through discovery and/or other proceedings, and accordingly, reserves the right to add such further defenses.

COUNTERCLAIM

Pursuant to Fed. R. Civ. P. 13, Coast alleges the following counterclaim against Zweibruder:

THE PARTIES

1. Defendant/counterclaim plaintiff Coast Cutlery Corporation is a corporation organized and existing under the laws of the State of Oregon, with its principal place of business located in Portland, Oregon.
2. On information and belief, plaintiff/counterclaim defendant Zweibruder Optoelectronics GmbH & Co. KG is a German limited liability company with its principal place of business in Solingen, Germany.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this counterclaim pursuant to 28 U.S.C. §§ 2201 and 2202 and 28 U.S.C. §§ 1331 and 1338, because the action arises, in part, under 15 U.S.C. § 1114 and 15 U.S.C. § 1125(a).
4. This Court further has subject matter jurisdiction over this counterclaim pursuant to 28 U.S.C. § 1332, because this counterclaim is between Zweibruder, a citizen of a foreign state, and Coast a citizen of the State of Oregon, and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.
5. Venue is proper in this judicial district under 28 U.S.C. 1391(b)(2) because a substantial part of the events and occurrences giving rise to Coast's counterclaim occurred in this district. Venue is also proper in this district under 28 U.S.C. § 1391(b)(1), (c) and (d).
6. This Court has personal jurisdiction over Zweibruder because, on information and belief, Zweibruder engages in substantial and systematic commercial activities with individuals and entities located or doing business in the State of Oregon, manufactures products used or purchased within the State of Oregon in the ordinary course of trade, and otherwise has constitutionally sufficient contacts with the State of Oregon so as to make personal jurisdiction proper in this Court. Zweibruder has further submitted himself to the personal jurisdiction of this Court, as Zweibruder has commenced the current action against Coast.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

7. Coast is a family-owned business founded in the Portland area in 1919. Among other things, Coast manufactures, markets, sells and distributes various flashlights, lanterns, headlamps, knives and multi-tools. Coast products are known for high quality and excellent performance, having been selected for use by such organizations as the U.S. Olympic Team, the U.S. Air Force Thunderbirds flight team, the National Football League, the U.S. Navy Blue Angels, the U.S. Army, the U.S. Navy Seals, the Central Intelligence Agency, and the Federal Bureau of Investigation. Today, Coast has a distribution network of over 10,000 retail outlets in the United States and in approximately 30 foreign countries.

8. Coast has been a distributor of Zweibruder products since approximately 2001. At the time the parties commenced their manufacturer/distributor relationship, Zweibruder was a relatively small company with little to no sales in the United States and offering only a small number of products, consisting primarily of small novelty lighting items used in connection with key chains sold as “premiums” for companies to display their own logos or brands. Very few of these products, if any, were sold by Zweibruder at retail as consumer products, but instead were sold to companies who then distributed these products to their customers as a form of marketing and promotion.

9. With the assistance of Coast, Zweibruder’s products and markets grew significantly between 2001 and 2003, as Zweibruder expanded into the United States – primarily through Coast’s efforts – with its line of LED flashlights and lighting products. Although the parties worked collaboratively on product design, Coast was solely responsible for all sales, marketing, and promotional efforts in the United States market (including without limitation, the design of product packaging and the development of marketing plans and strategies) and all Zweibruder products distributed by Coast were branded as COAST products.

10. Coast’s sales and marketing efforts were highly successful. For example, in 2001, Coast designed the first clampack package with a “Try the Light” feature in order to educate

customers on the uses and capabilities of LED lights, which at the time were relatively new products in the United States market. The “Try the Light” package allowed customers to test the product from inside the package, which lead to significant increased sales.

11. The “Try the Light” packaging design lead to Coast developing more sophisticated product packaging designs, in addition to Coast’s invention of the TEST IT mark. Coast has used the TEST IT mark in commerce in the marketing, distribution and sale of lighting products in the United States since at least as early as January 2005.

12. Between 2001 and 2005, Coast and Zweibruder collaborated on designs for various flashlight and other products, with Coast advising Zweibruder on what types of flashlights were popular in the United States market – i.e., size, style, price range, etc. – and Zweibruder then engaging designers to develop corresponding designs. Prototypes based on the designs were then provided to Coast for its review and approval. Although the parties worked collaboratively, Coast remained solely responsible for all sales and marketing efforts of Zweibruder products in the United States, including without limitation, the design and development of all product packaging, promotional and sales materials, in addition to product marketing plans and strategies.

13. Between 2005 and 2007, Zweibruder developed a new focusing system used in a line of LED flashlights and other lighting products that was referenced as “High Performance.” Coast developed the marketing strategy for these products and designed the product packaging, inventing the mark ADVANCED FOCUS SYSTEM. The ADVANCED FOCUS SYSTEM mark has been used by Coast in commerce in the marketing, distribution and sale of lighting products in the United States since at least as early as May 2007.

14. In the following years, Coast and Zweibruder continued to work together collaboratively, with Coast continuing to serve as Zweibruder’s exclusive distributor pursuant to various contracts entered into between the parties dating back to January 2001.

15. On or about June 1, 2008, the parties entered into an Exclusive Distributor Contract (the “Distributor Contract”) whereby Zweibruder appointed Coast as the exclusive distributor of all Zweibruder products in North America and South America. Pursuant to the terms of the Distributor Contract and the parties’ prior dealings, Coast remained solely responsible for all sales and marketing efforts of Zweibruder products in the United States, including without limitation, the design of all product packaging, marketing materials, and sales materials, and the development of all marketing strategies and plans.

16. At all material times during the parties’ manufacturer/distributor relationship, Zweibruder products sold in the United States were primarily branded as COAST products. Most Zweibruder products sold in the United States carried with it a manufacturer’s warranty offered by Coast and not Zweibruder, and it was Coast and not Zweidbruder to whom customers purchasing the products made complaints.

17. Beginning in early 2010 through early 2011, Zweibruder and Coast had been in negotiations to extend the term of the Distributor Contract; however, during these negotiations, on information and belief, Zweibruder was purchased by Leatherman Tool Group, Inc. (“Leatherman”), a competitor of Coast. On information and belief, Zweibruder intends to have its parent company Leatherman be the exclusive distributor of products displaying the TEST IT and ADVANCED FOCUS SYSTEM mark following the expiration of the Distributor Contract, which expired in accordance with its terms on May 31, 2011. The Distributor Contract and all prior distributor agreements between the parties are silent as to the ownership of trademarks or other intellectual property.

18. Zweibruder has informed Coast that Zweibruder considers itself – and not Coast – to be the owner of the TEST IT and ADVANCED FOCUS SYSTEM marks and has brought the current declaratory judgment action against Coast asking the Court to declare Zweibruder as the owner of the marks. Zweibruder has further informed Coast that all use by Coast of the TEST IT and ADVANCED FOCUS SYSTEM marks following the expiration of the Distributor Contract

on May 31, 2011 will constitute trademark infringement.

19. Coast is the owner of a U.S. federal trademark registration for the mark ADVANCE FOCUS SYSTEM, U.S. Registration No. 3,709,971, for use in connection with "Flashlights."

20. Coast is the owner of a pending U.S. trademark application for the mark TEST IT, U.S. Serial No. 85/282,351, for use in connection with "Pliers; Folding knives; Multi-tools, namely, combination plier, screwdriver, pocket knife, scissors, file, knife and tweezers."

21. On information and belief, Zweibruder is currently using the ADVANCED FOCUS SYSTEM marks on its website, www.zweibruder.com, and intends on using both the ADVANCED FOCUS SYSTEM and TEST IT marks in connection with the sale of its products in the future. Coast has at no time authorized Zweibruder's independent use of the TEST IT and ADVANCED FOCUS SYSTEM marks in the United States.

22. Coast is the owner of all right, title and interest in the United States in and to the TEST IT mark because, for among other reasons:

- a. Coast has priority rights in the TEST IT mark pursuant to its pending U.S. trademark application for the mark, U.S. Serial No. 85/282,351;
- b. Coast designed the packaging and provided such designs to Zweibruder for Zweibruder to package lighting products bearing the TEST IT mark;
- c. Coast first invented the TEST IT mark and first used the mark in commerce in the United States in connection with lighting products;
- d. Products sold under the TEST IT mark have been primarily branded as COAST products;
- e. Coast was at all material times solely responsible for all marketing, sales and advertising efforts in connection with the TEST IT mark in the United States, including without limitation, the design of product packaging and other sales and promotional items, as well as the development of

- marketing strategies and plans;
- f. Coast was at all material times the party primarily responsible for maintaining the quality and uniformity of products and/or product packaging sold under or in connection with the TEST IT mark;
 - g. Consumers associate the TEST IT mark with Coast and Coast possesses the goodwill associated with the products sold under the TEST IT mark; and
 - h. Coast was at all material times the party warranting the quality of the products sold under the TEST IT mark and Coast was at all material times the party to whom purchasers made complaints.

23. Coast is the owner of all right, title and interest in the United States in and to the ADVANCED FOCUS SYSTEM mark because, for among other reasons:

- a. Coast is the owner of a U.S. federal trademark registration for the mark ADVANCE FOCUS SYSTEM, U.S. Registration No. 3,709,971;
- b. Coast designed the packaging and provided such designs to Zweibruder for Zweibruder to package lighting products bearing the ADVANCED FOCUS SYSTEM mark;
- c. Coast first invented the ADVANCED FOCUS SYSTEM mark and first used the mark in commerce in the United States in connection with lighting products;
- d. Products sold under the ADVANCED FOCUS SYSTEM mark have been primarily branded as COAST products;
- e. Coast was at all material times solely responsible for all marketing, sales and advertising efforts in connection with the products sold under ADVANCED FOCUS SYSTEM mark in the United States, including without limitation, the design of product packaging and other sales and

promotional items, as well as the development of marketing strategies and plans;

- f. Coast was at all material times the party primarily responsible for maintaining the quality and uniformity of the products and/or product packaging sold under or in connection with the ADVANCED FOCUS SYSTEM mark;
- g. Consumers associate the ADVANCED FOCUS SYSTEM mark with Coast and Coast possesses the goodwill associated with the products sold under the ADVANCED FOCUS SYSTEM mark; and
- h. Coast was at all material times the party warranting the quality of the products sold under the ADVANCED FOCUS SYSTEM mark and Coast was at all material times the party to whom purchasers made complaints.

CLAIM FOR RELIEF

(Declaratory Judgment, 28 U.S.C. § 2201)

24. Coast incorporates by reference paragraphs 1 through 23 above.
25. Coast is the owner of all right, title and interest in the TEST IT and ADVANCED FOCUS SYSTEM marks.
26. Zweibruder has brought the current declaratory action against Coast asking that the Court declare Zweibruder the legal owner of the TEST IT and ADVANCED FOCUS SYSTEM marks. Zweibruder has further informed Coast of its alleged ownership rights and has further informed Coast that its use of the TEST IT and ADVANCED FOCUS SYSTEM marks following the expiration of the Distributor Contract will constitute trademark infringement.
27. There is a real, substantial and justiciable issue in controversy between Zweibruder and Coast regarding the parties' ownership rights in the TEST IT and ADVANCED FOCUS SYSTEM marks.

28. Pursuant to 28 U.S.C. § 2201, Coast seeks a declaratory judgment that:

- a. Coast is the true owner of the TEST IT and ADVANCED FOCUS SYSTEM marks;
- b. Coast's use of the marks following the expiration of the Distributor Contract will not infringe any rights held in the TEST IT and ADVANCED FOCUS SYSTEM marks held by Zweibruder, if any; and
- c. Zweibruder's use of TEST IT and ADVANCED FOCUS SYSTEM marks following the expiration of the Distributor Contract will constitute trademark infringement.

JURY DEMAND

Coast requests a trial by jury of all issues so triable.

PRAYER

WHEREFORE, Coast prays that:

1. All claims against Coast alleged by Zweibruder in the Complaint be dismissed with prejudice.
2. Zweibruder take nothing against Coast under the Complaint.
3. Coast be awarded its fees, costs and disbursements incurred herein.
4. The Court find, adjudge and decree that Coast is the true owner of the TEST IT and ADVANCED FOCUS SYSTEM marks.
5. The Court find, adjudge and decree that Coast's use of the TEST IT and ADVANCED FOCUS SYSTEM marks following the expiration of the Distributor Contract will not infringe any rights held in the marks by Zweibruder, if any.
6. The Court find, adjudge and decree that Zweibruder's use of the TEST IT and ADVANCED FOCUS SYSTEM marks following the expiration of the Distributor Contract will infringe Coast's rights in the marks.

7. The Court award Coast such other and further relief as the Court deems just and proper.

Dated this 8th day of July, 2011.

Respectfully submitted,

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